IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

(1) Nagar Parishad,Bikaner vs. Megh Raj Choudhary & ors.
S.B. Civil Second Appeal No.86/1981

(2) Liyakat Ali vs. Megh Raj Choudhary & ors.
S.B. Civil Second Appeal No.91/1981

against the judgment and decree dated 5.11.1980 passed by the learned Civil Judge, Bikaner in Civil Appeal Nos. 77/79 & 95/79.

Date of Judgment: May 08, 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. J. M. Bhandari for Nagar Parishad, Bikaner (appellant in S.B.Civil Second Appeal No.86/81 and respondent no.3 in S.B.Civil Second Appeal No.91/81.

Mr. R.R. Nagori for Liyakat Ali (appellant in S.B.Civil Second Appeal No.91/81 & respondent no.3 in S.B.Civil Second Appeal No.86/81.

Mr. S.D.Vyas and Mr. M.S. Purohit for respondents-Megh Raj Choudhary in both the appeals.

BY THE COURT:

Heard learned counsel for the parties.

S.B.Civil Second Appeal No.86/81 has been preferred by defendant-Municipal Board, Bikaner against the judgment and decree dated 6.9.1979 by which the trial court granted decree for perpetual injunction against the appellant-defendant Municipal Board, holding that the plot in dispute shall not be sold by auction on objection of

defendant no.2 but in case any neighbour raises any objection against the disposal of the land under Rule 23 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short "the Rules of 1974"), then the land be disposed of by public auction. The appeal against the judgment and decree of the trial court was dismissed by the appellate court vide judgment and decree dated 5.11.1080.

S.B.Civil Second Appeal No.91/1981 is also against the same judgments and decrees referred above but by defendant no.2, who is also seeking allotment of land in his favour.

The facts which are not in dispute are that plaintiff no.1 is a Trust and plaintiff no.2 is the Chief Trustee of plaintiff no.1-Trust. Plaintiff no.1 applied for the allotment of the plot in dispute having measurement of 264 sq.ft. According to the plaintiff, the plaintiff's property for which *Patta* was issued in favour of plaintiff no. 1 on 29.4.1949 is situated adjoining to the plot in dispute. Since the land in dispute is a small strip of land having measurement of less than 100 sq.yards, therefore, the plaintiff no.1 is entitled to apply for allotment of the strip of land under Rule 23 of the Rules of 1974. Plaintiff no.1, therefore, applied for allotment of land on 10.6.1970, upon which file was constituted. Since the land cost was more than Rs.500/-, therefore, prior approval of the District Collector was needed as per the Rules, hence the matter was sent to the District Collector, Bikaner for

approval. The District Collector, Bikaner granted approval for sale of the land in favour of plaintiff no.1 by order dated 28.9.1971 on payment of Rs.9/- per sq.ft.. The plaintiff was not agreeable to pay the cost of the land at the rate of Rs.9/- per sq.ft., therefore, the plaintiff preferred revision petition against the order of the District Collector. Bikaner. Till the filing of the suit, said revision was not decided by the revisional authority. According to the plaintiff though the revision petition of the plaintiff for getting the rate reduced was pending, still the plaintiff deposited Rs.2376/- which is the cost of the land approved by the District Collector and which is at the rate of Rs.9/- per sq.ft. This amount was deposited on 8.4.1975 by the plaintiff. According to the plaintiff, meanwhile part of the land in question was encroached upon by defendant no.2 (appellant in S.B.Civil Second Appeal No.91/81). Defendant no.2, on the basis of his possession, submitted the objection against the allotment of land in favour of the plaintiff. Defendant no.2 also submitted that he is ready and willing to purchase the said strip of land and he even prepared to pay Rs.25/- per sq.ft. The matter was referred to the District Collector, Bikaner, upon which the learned District Collector, Bikaner vide order dated 27.3.1976 ordered that the land be put to public auction. The plaintiff prayed that since the decision was taken to allot the land in favour of the plaintiff and the plaintiff already deposited Rs.2376/- on 8.4.1975 in pursuance of the

order of the District Collector, Bikaner dated 28.9.1971, therefore, the learned District Collector had no jurisdiction to dispose of the land by public auction. It is also submitted that defendant no.2 had no adjoining plot, adjoining the land in dispute, therefore, he had no locus standi to claim the plot under Rule 23 of the Rules of 1974 and he has no locus standi to challenge sale of the land in favour of plaintiff by the Municipal Board. The plaintiff prayed that the plot may not be auctioned on the request of defendant no.2 and it may be declared that the plaintiff is entitled to get the plot on free-hold basis under rule 23 of the Rules of 1974.

The defendant-Municipal Board Bikaner submitted written statement questioning the right of the plaintiff to maintain the suit after showing ignorance about constitution of the Trust and its registration etc. However, the Municipal Board admitted that the *Patta* no. 94 dated 29.4.1949 was issued in the name of plaintiff no.2. The Municipal Board also admitted that application was submitted by defendant no.2 for allotment of the land but it was on 6.6.1970 and it was for the land measuring 445 sq.ft. Upon plaintiff's moving application, file no. 21 was constituted and recommendation was sent to the District Collector, Bikaner for approval. Defendant- Municipal Board also admitted that the approval was granted by the District Collector, Bikaner for sale of the land on payment of cost of the land at the rate of

Rs.9/- per sq.ft., but this approval was conditional. The condition was that in case the plaintiff will deposit the cost of the land within seven days then the land will be sold to the plaintiff otherwise not. It is also submitted that the plaintiff did not deposit the cost of the land within seven days and after more than four years, deposited Rs.2376/- on 8.4.1975. The Municipal Board also admitted that the District Collector directed to sell the land by public auction and, therefore, the Municipal Board had right to sell the land by public auction. Defendant no.2 also questioned about the constitution of plaintiff-Trust and its authority to file the suit. Almost same defence was taken by defendant no.2 against allotment of the land in favour of the plaintiff.

The trial court framed the issues and after evidence and hearing the parties, the trial court held that the land in dispute since having measurement less than 100 sq. yards, therefore, is a strip of land, therefore, it is available for allotment. The trial court also held that the plaintiff is owner of the adjoining property, therefore, the defendant, who is not adjoining neighbour, has no right to object for allotment of land to the plaintiff under Rule 23. Therefore, the trial court held that the plot cannot be auctioned on objection of defendant no.2 but in case there is any other objection of the adjoining plot holder then the plot is required to be sold by public auction.

In the first appellate court, in two appeals, preferred by the two

defendants-Municipal Board,Bikaner and defendant no.2 Liyakat Ali, the first appellate court considered the matter in the light of rule 23 and reached to the conclusion that looking to the measurement of the plot, it cannot be said that the plot cannot be used independently. Since the plot can be used independently then the land is not available for sale by allotment under sub-rule (1) of Rule 23 of the Rules of 1974, may it be less than 100 sq.yards. In view of the above, the appellate court was also of the view that the plot can be disposed of by auction.

The learned counsel appearing for the appellant, which has been preferred by the Municipal Board, Bikaner, vehemently submitted that the plot in question can be used as independent plot and, therefore, it is not available for allotment to the plaintiff even as per sub-rule (1) of Rule 23 of the Rules of 1974, which clearly provides that those plots which are not fit to be disposed of as plots, shall be sold to the owners of the adjoining plots. When plot can be used independently then it can be disposed of by public auction, may there be no objection from any of person or any of the neighbour. It is also submitted that the plaintiff though deposited the cost of the land but it was not in compliance of the order of the District Collector, Bikaner dated 28.9.1971 by which the plaintiffs were permitted to deposit the cost of the land within seven days. The plaintiff admittedly deposited the cost of the land on 8.4.1975. It is also submitted that the said deposit was not in pursuance

of the order dated 28.9.1971 nor time was extended by the District Collector for deposit of the cost of the land. It is further submitted that mere deposit of the cost of the land, cannot confer any right upon the plaintiff to claim allotment of the plot. Admittedly, no order allotting the land has been passed in favour of the plaintiff. Therefore, the plaintiffs cannot claim right over the plot. It is also submitted that defendant no.2 has no right to claim the plot by mere offering Rs.25/- sq.ft.

The learned counsel for the appellant in S.B.Civil Second Appeal No.91/81 on behalf of the private respondent Liyakat Ali submitted that defendant Liyakat Ali was admittedly in possession of the part of the land in dispute, therefore, defendant no.2-appellant Liyakat Ali raised objection against the allotment of the land to the plaintiff. It is also submitted that defendant no.2-appellant Liyakat Ali took part in the public auction also and gave bid and offered Rs.25/- per sq.ft. to the Municipal Board but because of the interim order passed by the civil court, the land was not allotted to defendant-appellant Liyakat Ali.

The learned counsel for the appellant Liyakat Ali vehemently submitted that the plaintiff's suit was not maintainable because of the reason that the suit has not been filed by impleading of the trustees which is the mandatory requirement and the suit on behalf of the trust without impleading trustees, is not maintainable. It is also submitted

that the plaintiff did not submit any resolution authorising any person to file the suit on behalf of the trust. Therefore, this Court, in S.B.Civil Second Appeal No.91/81, framed the substantial question of law on 25.11.1981, which is as under:-

"Whether the suit is not maintainable for the relief of injunction in the form in which it has been instituted ?"

The learned counsel for the appellant-Liyakat Ali further vehemently submitted that the plot can be put to use independently and, therefore, the plot could have been only auctioned and could not have been disposed of by allotment.

The learned counsel for the plaintiffs, opposing both the appeals, vehemently submitted that the plaintiff completed all the obligations which he was obliged to do for getting the plot in question. The plaintiff is owner of the adjoining plot, therefore, was entitled to claim the plot by allotment. The size of the plot is less than 100 sq.yards, therefore, the plot was available for allotment. It is also submitted that the plot could not have been used independently and, therefore, the plot could be allotted to the plaintiff only.

The learned counsel for the plaintiffs-respondents also vehemently submitted that the defendant no.2 has no adjoining plot, therefore, has no locus standi to challenge the allotment of plot in favour of plaintiffs as the defendant no.2 himself cannot claim the plot in any manner under rule 23 of the Rules of 1974. It is also submitted

that the defendant's possession over the part of the plot is only unauthorized possession which cannot give any right to the defendant.

I considered the submissions of the learned counsel for the parties and perused the record.

In S.B.Civil Second Appeal No.86/81, following substantial question of law was framed by this Court on 25.11.1981:-

> *"Whether on the facts and in the circumstances of the case, the learned Civil Judge was not right in holding that the disputed land is a strip of land within the meaning of rule 23 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 ? If the answer to this question is in the affirmative, what is the effect on the suit ?"*

No detail facts are required for deciding the substantial question of law framed in S.B.Civil Second Appeal No.86/81 because of the simple reason that so far as measurement of the plot in question is concerned, admittedly, it is less than 100 sq.yards, therefore, it falls in the definition of the strip of land but the question relevant for the purpose of deciding the appeal is that whether the plot was available for allotment under rule 23 to adjoining neighbour or not. This fact depends upon the question of fact whether the plot can be used independently as independent plot or not. If the plot can be used independently then the said plot is not available for sale under sub-rule (1) of Rule 23 of the Rules of 1974, as is clear from the opening language used in sub-section

(1) of Section 23 of the Act of 1974, which is as under:-

> **"23. Strips of land.- (1) Strip to be sold at Market value and its determination.-** Small strips of land which are not fit to be disposed of as plots shall be sold to the owners of the adjoining plots at the market value to be calculated keeping in view the prevailing price of land as ascertained from the preceding sale of land in the area. Such strip of land shall be disposed of on an outright sale of the adjoining property is free-hold, and leased it out the adjoining property owner has lease-holder rights."

From a bare perusal of the sub-rule (1) of Rule 23, it is clear that "the plots which are not fit to be disposed of as plots, shall be sold to the owners of the adjoining plots ..... ." In the case in hand, even part of the plot has been sought by the defendant no.2 as defendant no.2 claims that said part of the land has been let out to defendant no.2 by the Municipal Board. Therefore, it is clear that even a part of the land can be used independently and there is finding of fact recorded by the first appellate court that the plot can not be used independently. In view of the above finding, the land was not available for allotment to the adjoining plot owner on allotment basis on priority basis of having the plot adjoining to the plot to be sold. In view of the above, the substantial question of law as framed in S.B.Civil Second Appeal No.86/81 is decided in the aforesaid manner and it is held that though the land in question is strip of land but can be used independently,

hence cannot be disposed of by allotment to the adjoining neighbour under sub-rule (1) of Rule 23 of the Rules of 1974.

Natural consequence of the decision on the substantial question of law framed in S.B.Civil Second Appeal No.86/81 is that whether there is objection of adjoining neighbour or not, the plot could have been sold only by public auction and not by allotment or not by auctioning the plot amongst two claimants. The locus standi of defendant no.2 to challenge the allotment of the land to the plaintiff also becomes irrelevant because of the simple reason that the land could not have been allotted to the plaintiff in the manner in which the plaintiff is seeking allotment of the land. The plaintiff though deposited the cost of the land but after four years from the period granted by the learned District Collector, therefore, that itself has not given any right to the plaintiff to claim allotment of plot and particularly when the allotment is sought against the Rules.

So far as locus standi of the plaintiff to file the suit is concerned, that becomes totally irrelevant in view of the fact that the plaintiff also sought auction of the plot and by the impugned decrees, the plot can be disposed of by public auction and, therefore, the substantial justice has been done by the two courts below and that too in public interest for augmenting revenue for the Municipal Board for public purpose. Therefore, I do not think that the defendant can raise objection about

maintainability of the suit in the facts and circumstances of the case. Therefore, this Court is not deciding the issue about the authority of the plaintiff to maintain the suit in the peculiar facts and circumstances of the case.

Hence the appeal of the appellant-Municipal Board being S.B.Civil Second Appeal No.86/81 is allowed and S.B. Civil Second Appeal No.91/81 is dismissed with direction to the Muncipal Board, Bikaner to dispose of the land only by public auction if they wish to dispose of the plot. The plaintiff shall be entitled to get the amount deposited by the plaintiff from the Municipal Board, Bikaner but without interest.

(PRAKASH TATIA),J.

Mlt.